

REQUEST FOR COUNCIL ACTION

MEETING
11-17-03

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AGENDA SECTION: PUBLIC HEARING	ORIGINATING DEPT: PLANNING	ITEM NO. E-4
ITEM DESCRIPTION: Type III, Phase III Conditional Use Permit #03-52 by Western Walls, Inc. to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of residential lots. The property is located south of 7 th Street NW and east of Lake Street NW.		PREPARED BY: Mitzi A. Baker, Senior Planner

November 12, 2003

Recommendation:

The Commission reviewed this Conditional Use Permit on October 22, 2003 and recommend approval subject to the following conditions:

1. *Prior to commencing operations on this property, the applicant shall obtain grading plan approval from the City.*
2. *Fill within the existing Floodway, as shown on the proposed grading plan, shall not commence until after a CLOMR (Conditional Letter of Map Revision) has been approved by FEMA.*

Council Action Needed:

1. *If the Council wishes to proceed, it should instruct the City Attorney to prepare a resolution with findings supporting their decision.*

Attachment:

1. Staff Report

Distribution:

1. City Attorney – Legal Description Attached
2. Planning Department File
3. McGhie & Betts, Associates
4. Applicant: This item will be considered sometime after 7:00 p.m. on Monday November 17, 2003, in the Council/Board Chambers at the Government Center, 151 4th Street SE.

Note: Conditional Use Permit consultant report sent separately to Mayor & Council due to its length.
A. N.

COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____

CUP #03-52
Western Walls
700' Notification Distance
Ward 2 Marcoux
09/30/03

93,

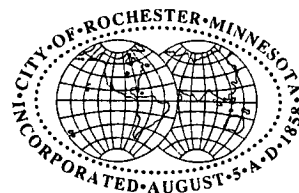


ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF
Olmsted

www.olmstedcounty.com/planning



TO: City Planning & Zoning Commission

FROM: Mitzi A. Baker, Senior Planner

DATE: October 15, 2003

RE: Type III, Phase III Conditional Use Permit #03-52 by Western Walls, Inc. to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of residential lots. The property is located south of 7th Street NW and east of Lake Street NW.

Planning Department Review:

Applicant(s): Western Walls
604 11th Ave. NW
Rochester, MN 55901

Engineer/Consultant: McGhie & Betts, Inc.
1648 Third Ave. SE
Rochester, MN 55904

Requested Action: The applicant is proposing to place fill in the Flood Prone District, which requires a Conditional Use Permit.

Location of Property: This property is located south of 7th St. NW, east of Lake St. NW.

Zoning: R-1 (Mixed Single Family) District. This property is also within the Flood Overlay Districts and Shoreland Overlay District.

Referral Comments: NONE

Standards for Approval: Conditional use permits in the Flood Districts are subject to the same standards as every conditional use (see Section 61.146), and some specific conditions related to the Flood Districts (Sections 62.824, 62.834 and 62.860). Activities in the Shoreland Overlay District are subject to specific regulations in Section 62.1000 *et. seq.*

Report Attachments: 1. Excerpts from the Rochester Zoning Ordinance and Land Development Manual



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2. Location Map
3. Application materials (report and plans)

Background & Summary :

The applicant is proposing to modify the existing floodway and 100 year floodplain elevations within this area under separate applications (Zoning District Amendment and applications through FEMA and MN DNR), which will include re-shaping the channel of the creek. In order to prepare the property for development with single family homes some fill is proposed to be placed within the Flood Prone district as identified on the proposed grading plan.

When deciding on a Conditional Use Permit in any flood district, the standards of Sections 61.146 and 62.824 shall be considered. These sections are attached to the staff report. In addition to Sections 61.146 and 62.860 need to be complied with.

Section 62.860 of the LDM states that "the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered engineer or hydrologist that the following conditions have been met:

1. Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
2. No net loss of capacity for surface storage of flood waters shall result from the activity.
3. The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.

Recommendation:

If the Commission wishes to make a recommendation, staff would recommend the following conditions or modifications:

- 1. Prior to commencing operations on this property, the applicant shall obtain grading plan approval from the City.***
- 2. Fill within the existing Floodway, as shown on the proposed grading plan, shall not commence until after a CLOMR (Conditional Letter of Map Revision) has been approved by FEMA.***
- 3. Approval is contingent upon the applicant or consultant shall providing certification as required by Section 62.860 of the LDM.***

Planning Commission Action Needed:

Conditional use permits of this sort require City Council approval. The Planning Commission should consider this item (not a public hearing) and make a recommendation to approve, approve with conditions, or deny this request to be forwarded to the City Council. The City Council will hold a public hearing at a later date.

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EXCERPTS FROM THE ROCHESTER ZONING ORDINANCE AND LAND DEVELOPMENT MANUAL

61.145 **Matters Under Consideration:** The review of a conditional use is necessary to insure that it will not be of detriment to and is designed to be compatible with land uses and the area surrounding its location; and that it is consistent with the objectives and purposes of this ordinance and the comprehensive plan.

61.146 **Standards for Conditional Uses:** The zoning administrator, Commission, or Council shall approve a development permit authorizing a conditional use unless one or more of the following findings with respect to the proposed development is made:

- 1) provisions for vehicular loading, unloading, parking and for vehicular and pedestrian circulation on the site and onto adjacent public streets and ways will create hazards to safety, or will impose a significant burden upon public facilities.
- 2) The intensity, location, operation, or height of proposed buildings and structures will be detrimental to other private development in the neighborhood or will impose undue burdens on the sewers, sanitary and storm drains, water or similar public facilities.
- 3) The provision for on-site bufferyards and landscaping does not provide adequate protection to neighboring properties from detrimental features of the development.
- 4) The site plan fails to provide for the soil erosion and drainage problems that may be created by the development.
- 5) The provisions for exterior lighting create undue hazards to motorists traveling on adjacent public streets or are inadequate for the safety of occupants or users of the site or such provisions damage the value and diminish the usability of adjacent properties.
- 6) The proposed development will create undue fire safety hazards by not providing adequate access to the site, or to the buildings on the site, for emergency vehicles.
- 7) In cases where a Phase I plan has been approved, there is a substantial change in the Phase II site plan from the approved Phase I site plan, such that the revised plans will not meet the standards provided by this paragraph.
- 8) The proposed conditional use does not comply with all the standards applying to permitted uses within the underlying zoning district, or with standards specifically applicable to the type of conditional use under consideration, or with specific ordinance standards dealing with matters such as signs which are part of the proposed development, and a variance to allow such deviation has not been secured by the applicant.

62.824 **Conditional Use Permits - Standards for Approval:** When deciding on Conditional Use Permits in any of the flood districts, the following factors, in addition to the standards of Paragraph 61.146 shall also be considered:

- 1) The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - 2) The danger that materials may be swept onto other lands or downstream to the injury of others.
 - 3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary condition.
 - 4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - 5) The importance of the services provided by the proposed facility to the community.
 - 6) The need for a waterfront location for the facility.
 - 7) The availability of alternative locations not subject to flooding for the proposed use.
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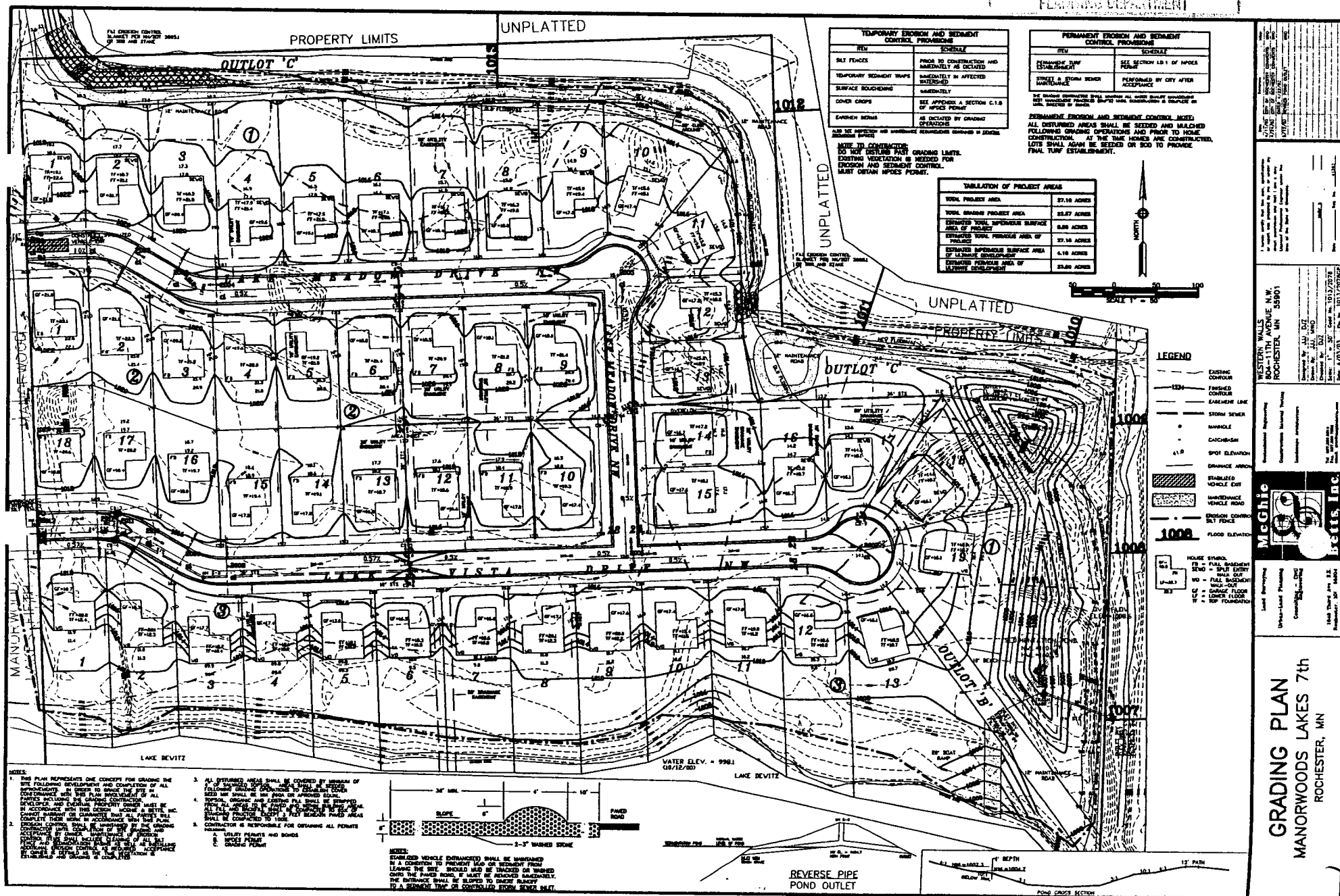
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- 8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - 9) The relationship of the proposed use to the comprehensive plan and flood plain management program for the area.
 - 10) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - 11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - 12) Such other factors which are relevant to the purposes of Paragraph 62.800.

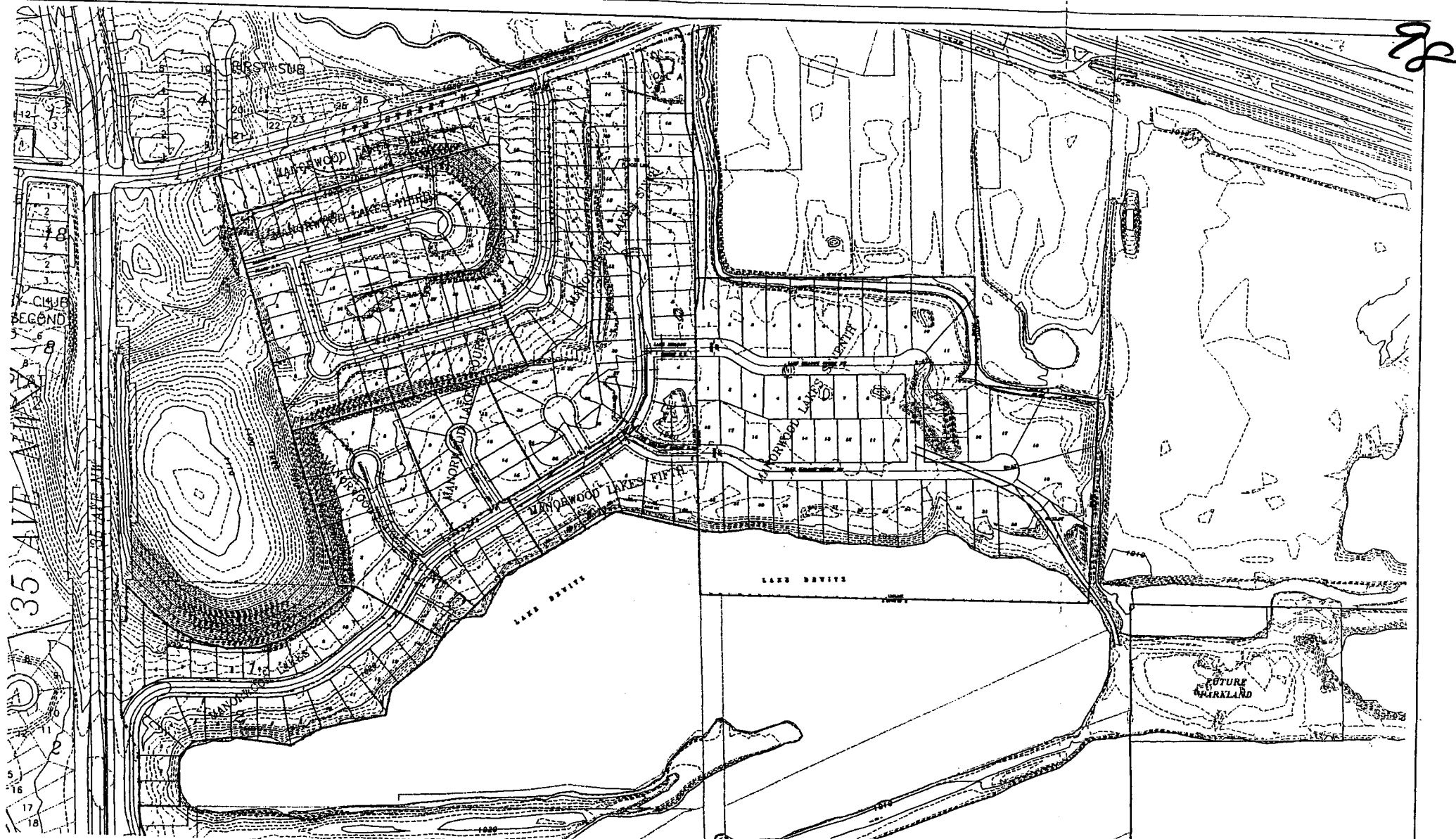
62.860 CONSTRUCTION STANDARDS IN THE FLOOD PRONE DISTRICT

The requirements applicable in the Flood Fringe District, as defined in Section 62.840 shall apply in the Flood Prone District and, in addition, the deposition of any fill or spoil from dredging of sand and gravel operations, the construction of any structure, or the grading or paving of any areas shall require certification by a registered professional engineer or hydrologist that the following conditions have been met:

- 1) Fill deposited in the flood prone area shall be no more than the minimum amount necessary to conduct the use.
 - 2) No net loss of capacity for surface storage of flood waters shall result from the activity.
 - 3) The effect of such activities in the flood prone area shall not result in an increase in erosion potential on the site.
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UNCLASSIFIED
EVALUATION DEPARTMENT





PLATTED - 177 LOTS
 FUTURE - 50 LOTS
 TOTAL - 227 LOTS
 ±88.20 ACRES
 DENSITY = 2.57 UNITS/ACRE



NO.	DESCRIPTION
1	177 LOTS
2	50 LOTS
3	227 LOTS
4	88.20 ACRES
5	2.57 UNITS/ACRE

McGhie
 McGhie & Co., Inc.
 11111 Avenue A, N.E.
 Rochester, MN 55901
 Phone: (507) 251-1111
 Fax: (507) 251-1112

WESTERN HILLS
 11111 Avenue A, N.E.
 Rochester, MN 55901
 Phone: (507) 251-1111
 Fax: (507) 251-1112

GENERAL DEVELOPMENT PLAN
 MANORWOOD LAKES
 ROCHESTER, MN

MANORWOOD LAKES SEVENTH



1. **Execution of a Pedestrian Facilities Agreement is required to address the Owner's obligations regarding the future construction of pedestrian facilities along the frontage of 11th Avenue NW.**

* **Type III, Phase III Conditional Use Permit #03-52 by Western Walls, Inc. to allow for the placement of fill in the flood prone area. The proposal is to place fill in the flood prone area to allow for the development of residential lots. The property is located south of 7th Street NW and east of Lake Street NW.**

Ms. Mitzi A. Baker presented the staff report, dated October 15, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Ms. Baker stated that the third condition listed in the staff report has now been met. The consultant submitted certifications required by the Ordinance.

Mr. Burke moved to recommend approval of Type III, Phase III Conditional Use Permit #03-52 by Western Walls, Inc. with the staff-recommended findings and two conditions (as listed by staff). Mr. Haeussinger seconded the motion. The motion carried 7-0.

CONDITIONS:

1. **Prior to commencing operations on this property, the applicant shall obtain grading plan approval from the City.**
2. **Fill within the existing Floodway, as shown on the proposed grading plan, shall not commence until after a CLOMR (Conditional Letter of Map Revision) has been approved by FEMA.**

PUBLIC HEARINGS:

Type III, Phase II Amendment #03-01 to the Final Plan which covers the Apache Mall Shopping Center, to allow for the construction of a freestanding restaurant in the location of demolished Montgomery Wards Auto Store by Romano's Macaroni Grill. The proposal is to construct a 6,820 square foot building. The property is located north of 16th Street SW, west of Apache Drive SW and east of Highway 52.

Ms. Mitzi A. Baker presented the staff report, dated October 16, 2003, to the Commission. The staff report is on file at the Rochester-Olmsted Planning Department.

Ms. Baker stated that the condition regarding the parking lot modifications should be something that they can easily accommodate.

Ms. Baker stated that she did not receive any calls or concerns regarding the application.

Ms. Wiesner asked if there would be a drive-up.

Ms. Baker stated that there would only be parking spots reserved for people getting takeouts.

Mr. Quinn stated that there were previous concerns regarding parking compliance. He questioned if there were any concerns now.